

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LIFESTAR RESPONSE)
CORPORATION)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. CV-05-F-1013-N
)
MILDRED LEMUEL, individually)
and as Administratrix of the Estate)
of Darnell Eugene Lemuel,)
PEGGY JO LEMUEL, JACINTA)
LEMUEL BENDER and CYNDAL)
ANNETTE PROVENZANO)
)
Defendants.)

MOTION TO DISMISS

Come Now Defendant Mildred Lemuel individually and as the Administratrix of the Estate of Darnell Eugene Lemuel (hereinafter Lemuel) and moves, pursuant to Federal Rules of Civil Procedure 12 (b) (1) and (6), to dismiss the declaratory judgment action filed by Lifestar Response Corporation (“Lifestar Response” or “Plaintiff”), and show as follows:

1. Lifestar Response purports to bring this action pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act. The facts alleged do not create a proper justiciable controversy. Therefore, this Court does not have subject matter jurisdiction over the Complaint and the Complaint also fails to state a claim. The Complaint should be dismissed pursuant to F.R.C.P. Rules 12 (b) (1) and (6).

2. In support of the Motion to Dismiss, Lemuel submits an accompanying brief.

Wherefore Defendant Mildred Lemuel individually and as the Administratrix of the Estate of Darnell Eugene Lemuel prays that the Court will grant this Motion to Dismiss and dismiss the Complaint filed by Plaintiff Lifestar Response Corporation in its entirety, and grant such further relief as the Court deems appropriate.

Respectfully submitted this day, February 21, 2006.

/s/Timothy C. Halstrom

Timothy C. Halstrom

Bar Number HAL021

Of Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2006, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to counsel of record.

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